

REMARKS

The Final Office Action mailed October 31, 2007, has been received and reviewed. Claims 1-13 are currently pending in the application. Claims 1-13 stand rejected. Applicant has amended claims 1-7 and 9-13, and respectfully requests reconsideration of the application as amended herein.

35 U.S.C. § 102(e) Anticipation Rejections

Anticipation Rejection Based on U.S. Patent No. 6,771,700 to Razoumov et al.

Claims 1-13 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Razoumov (U.S. Patent No. 6,771,700). Applicant respectfully traverses this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The 35 U.S.C. § 102(e) anticipation rejections of claims 1-13 are improper because Razoumov does not describe, either expressly or inherently, the identical inventions in as complete detail as are contained in the claims. Since Razoumov does not describe, either expressly or inherently, the identical inventions in as complete detail as are contained in the claims, Razoumov cannot anticipate under 35 U.S.C. § 102 the presently claimed invention of amended independent claim 1, and claims 2-5 depending therefrom and amended independent claim 6, and claims 7-13 depending therefrom.

Claims 1-5

Applicant's invention as presently claimed in amended independent claim 1, from which claims 2-5 depend, recites:

1. A transmitter, comprising:
 - a processor operative to control a first transmission and retransmission of data; and
 - a memory storage device operative for storing a plurality of computer-readable instructions, comprising:
 - a first set of instructions for receiving a first transmission frame error rate and a retransmission frame error rate from a receiver;
 - a second set of instructions for ***determining a first transmission energy setpoint as a function of the first transmission frame error rate and a first transmission quality***, wherein the determination of the first transmission energy setpoint is responsive to an update trigger; and
 - a third set of instructions for ***determining a retransmission energy setpoint as a function of the retransmission frame error rate and a retransmission quality***, wherein the determination of the retransmission energy setpoint is responsive to the update trigger. (Emphasis added.)

At least Applicant's claimed elements of "determining a ***first transmission*** energy setpoint as a function of the ***first transmission*** frame error rate and a ***first transmission*** quality" and "determining a ***retransmission*** energy setpoint as a function of the ***retransmission*** frame error rate and a ***retransmission*** quality" are not disclosed in Razoumov.

The Final Office Action in the Response to Arguments section states:

Applicants argue in page 6 that Razoumov does not disclose determining a transmission energy setpoint as a function of the transmission frame error rate and determining a retransmission energy setpoint as a function of the retransmission frame error rate. Applicants, further, emphasize in page 7 that E2 is the retransmission energy setpoint and not the transmission energy setpoint. **Examiner respectfully agrees.** However, 1st retransmission, 2nd retransmission, or 3rd retransmission is simply or merely another transmission that occurs after a period of time to carry missing data. In a sequence of transmissions, 2nd or 3rd transmissions are called retransmissions to carry missing data. However, 2nd or 3rd retransmission is still a transmission. Therefore, E2 is considered and interpreted, by the Examiner, as the transmission energy setpoint and E3 is the retransmission energy setpoint. Further, **claim 1 does not recite that wherein the transmission energy setpoint is the first transmission.** Therefore, it is reasonable to consider and interpret 2nd transmission as the transmission energy setpoint and 3rd transmission as retransmission energy setpoint. (Final Office Action, pp. 6-7; emphasis added.)

Accordingly, as pointed out by the Examiner, Applicant herein amends independent claim 1 to recite, in part, “determining a ***first transmission*** energy setpoint as a function of the ***first transmission*** frame error rate and a ***first transmission*** quality” which the Final Office Action acknowledged as not being disclosed in Razoumov. Therefore, since at least Applicant’s claimed elements of “determining a ***first transmission*** energy setpoint as a function of the ***first transmission*** frame error rate and a ***first transmission*** quality” and “determining a ***retransmission*** energy setpoint as a function of the ***retransmission*** frame error rate and a ***retransmission*** quality” are not disclosed in “as complete detail as is contained in the claim” as is required for anticipation under 35 U.S.C. §102, Razoumov cannot anticipate under 35 U.S.C. §102 Applicant’s invention as presently claimed in amended independent claim 1, and claims 2-5 depending therefrom.

Accordingly, such claims are allowable over the cited prior art and Applicant respectfully requests that such rejections be withdrawn.

Claims 6-13

Applicant’s invention as presently claimed in independent claim 6, from which claims 7-13 depend, recites:

6. In a wireless communication system, a method comprising:
determining a first transmission energy setpoint to achieve a first transmission frame error rate ***in a first transmission***;
adjusting the first transmission energy setpoint on occurrence of a first transmission error, wherein the first transmission error is received from a receiver;
determining a retransmission energy setpoint to achieve a retransmission frame error rate;
and
adjusting the retransmission energy setpoint on occurrence of a retransmission error, wherein the retransmission error is received from the receiver. (Emphasis added.)

At least Applicant’s claimed elements of “determining a first transmission energy setpoint from a first transmission to achieve a first transmission frame error rate ***in a first transmission***” and “***adjusting the first transmission energy setpoint on occurrence of a first transmission error***” and “***adjusting the retransmission energy setpoint on occurrence of a retransmission error***” are not disclosed in Razoumov.

The Final Office Action in the Response to Arguments section states:

Applicants further argue in page 8 that Razoumov does not disclose adjusting the transmission energy setpoint on occurrence of a transmission error and adjusting the

retransmission energy setpoint on occurrence of a retransmission error. Examiner respectfully disagrees. *Razoumov discloses that (col. 7, formula 22) energy E2 is adjusted to E3 after received f(E2) and (col. 7, formula 22) energy E3 is adjusted to E4 after received f(E3).* Herein, the *adjustments are made on occurrences of transmission errors*. Therefore, Razoumov clearly discloses the claimed invention. (Final Office Action, p. 7; emphasis added.)

First, Applicant respectfully notes that while “*adjustments are made on occurrences of transmission errors*”, Razoumov discloses adjustments based on occurrences of errors in a different transmission while Applicant claims adjustments based on occurrences of errors in that transmission. Applicant does not dispute that Razoumov discloses adjusting energy levels, however, the approach disclosed and admitted to by the Examiner in the above quotation is not the same approach for adjusting as claimed by Applicant in amended independent claim 6.

According to Razoumov and the admission by the Examiner above, Razoumov’s adjustments to the power level for a successive transmission is based upon the outcome (e.g., frame error rate) of the previous transmission. Specifically, Razoumov discloses the power levels of successive transmissions (e.g., retransmission 1, retransmission 2, etc.) are based upon the outcome of the previous transmissions (e.g., transmission, retransmission 1, etc.) and not based upon the outcome of that same transmission. Specifically, the Final Office Action concedes, “Razoumov discloses that [] *energy E2 is adjusted to E3 after received f(E2)* and [] *energy E3 is adjusted to E4 after received f(E3)*” where E2, E3 and E4 are the energy levels of successive retransmissions of the data and f(Ex) is the frame error rate. (Final Office Action, p. 7; emphasis added.) In other words, Razoumov discloses adjusting a subsequent transmission’s power level based upon the outcome of the immediately previous transmission.

In distinct contrast, Applicant’s invention as claimed in amended independent claim 6 recites, in part, “*adjusting the first transmission energy setpoint on occurrence of a first transmission error*” and “*adjusting the retransmission energy setpoint on occurrence of a retransmission error*”. Accordingly, Applicant’s invention as presently claimed in amended independent claim 6 is not disclosed in “as complete detail as is contained in the claim” as is required for anticipation under 35 U.S.C. §102. Therefore, Razoumov cannot anticipate under 35 U.S.C. §102 Applicant’s invention as presently claimed in amended independent claim 6, and claims 7-13 depending therefrom.

Accordingly, such claims are allowable over the cited prior art and Applicant respectfully requests that such rejections be withdrawn.

CONCLUSION

Claims 1-13 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicant's undersigned attorney.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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